

CHAPTER 4:

U.S. Free Trade Agreements

The United States participated in five operative free trade agreements (FTAs) as of December 31, 2003. The U.S.-Israel FTA was implemented in 1985, the North American Free Trade Agreement (NAFTA) in 1994, the U.S.-Jordan FTA in 2000, the U.S.-Chile FTA in 2003, and the U.S.-Singapore FTA in 2003.¹ In 2003, the President notified Congress of his intention to launch FTA negotiations with Australia and Bahrain. Also, the Administration launched negotiations with the countries of the South African Customs Union (Botswana, Lesotho, Namibia, South Africa, and Swaziland) on June 2, 2003. During 2003 the United States continued negotiations which began in 1994 with 34 other democratic countries of the Western Hemisphere toward the creation of the Free Trade Area of the Americas (FTAA). On January 25, 2004, the United States concluded the Central America Free Trade Agreement (CAFTA) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua)² and on March 2, 2004, an FTA was concluded with Morocco.³

North American Free Trade Agreement⁴

U.S. Trade with NAFTA Partners

The North American Free Trade Agreement (NAFTA), which came into effect January 1, 1994, created the world's largest trading area. Total trade with NAFTA partners increased by 3 percent in 2003 compared to 2002, with U.S.-Canada trade totaling \$372.8 billion in 2003 and U.S.-Mexico trade totaling \$220.3 billion (table 4-2). In 2003, total U.S. trade with Canada and Mexico increased over the 2002, after declining in 2002 from the 2001 level. The U.S. trade deficit with NAFTA partners increased for the third year in a row growing 15 percent from \$112.2 billion in 2001 to \$129.4 billion in 2003.

¹ For background information on the U.S.-Israel, U.S.-Jordan, U.S.-Chile, and U.S.-Singapore FTAs, see USITC, The Year in Trade: Operation of the Trade Agreements Program, 54th Report, USITC publication 3630, Aug. 2003, pp. 4-1 through 4-15

² On March 15, 2004, the United States and the Dominican Republic concluded trade talks integrating the Dominican Republic into the CAFTA.

³ Information was obtained from USTR at <http://www.ustr.gov>, Apr. 25, 2004. On February 8, 2004, the United States and Australia concluded an FTA. Table 4-1 summarizes the status of U.S. FTA negotiations as of December 31, 2003, and information regarding selected 2003 FTA negotiations is provided in the following section.

⁴ U.S. bilateral relations with Canada and Mexico are discussed in Chapter 5.

Table 4-1
Status of U.S. FTA negotiations, as of December 31, 2003

FTA	Partner(s)	Date negotiations began/ notified to Congress	Status of negotiations
U.S.-Israel	Israel	N/A	Implemented 1985
U.S.-Jordan	Jordan	N/A	Implemented 2000
NAFTA	Canada, Mexico	N/A	Implemented 1994
U.S.-Bahrain	Bahrain	Negotiations began Jan. 26, 2000.	N/A
U.S.-Chile FTA	Chile	Negotiations began Dec. 6, 2000.	FTA signed June 6, 2003.
U.S.-Singapore FTA	Singapore	Negotiations began Nov. 16, 2000.	FTA signed May 6, 2003.
Free Trade Area of the Americas (FTAA)	33 democracies of the Western Hemisphere ¹	Negotiations began April 19, 1998.	Market access negotiations began May 15, 2002. Offers for agricultural and industrial products, services, investment, and government procurement were presented between Dec. 15, 2002 and Feb. 15, 2003, with submissions of requests for improvements to the offers made between Feb. 16, 2003 and June 15, 2003.
U.S.-Central America Free Trade Agreement	Honduras, Nicaragua, Costa Rica, El Salvador, and Guatemala	President notified Congress of intention to negotiate Aug. 22, 2002. Negotiations began Jan. 8, 2003.	Negotiations initiated Jan. 8, 2003. Four rounds of negotiations completed as of June 2003. The United States tabled text on rules of origin in March 2003, and text on market access proposals for agricultural and industrial goods in May 2003. The U.S. administration discussed the possibility of allowing the Dominican Republic to become a party to the CAFTA.
U.S.-Morocco FTA	Morocco	President notified Congress of intention to negotiate Aug. 22, 2002. Negotiations began Jan. 21, 2003.	The first round of negotiations concluded in late January 2003, and a second round was held in March 2003. Established March 2, 2004.
U.S.-South African Customs Union FTA	Botswana, Lesotho, Namibia, South Africa, and Swaziland	President notified Congress of intention to negotiate Nov. 5, 2002. Negotiations began June 2, 2003.	First round of negotiations occurred in June 2003.
U.S.-Australia FTA	Australia	President notified Congress of intention to negotiate Nov. 13, 2002. Negotiations began March 19, 2003.	Negotiation rounds held in March, May, and July 2003. FTA signed February 8, 2004.
U.S.-Taiwan FTA	Taiwan	Not applicable	No negotiations have begun. On Nov. 6, 2001, Senator Max Baucus (D-Montana) introduced legislation to establish a U.S.-Taiwan FTA. On Jan. 17, 2002, the U.S. Senate Committee on Finance formally requested USITC to conduct an assessment of the economic effects of a U.S.-Taiwan FTA. The USITC report ² was delivered to Congress in October 2002.

¹ The 33 other FTAA countries are: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Vincent and the Grenadines, St. Lucia, St. Kitts and Nevis, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

² USITC, U.S.-Taiwan FTA: Likely Economic Impact of a Free Trade Agreement Between the United States and Taiwan, Investigation No. 332-438, USITC publication 3548, October 2002.

Sources: Compiled by the Commission from multiple sources, including: U.S. Department of State telegram, "Successful Round 1 of U.S.-SACU Free Trade Negotiations," message reference No. 02978, prepared by U.S. Embassy Pretoria, June 6, 2003; U.S. Department of State telegram, "U.S.-Morocco Free Trade Agreement Update," message reference No. 2855, prepared by U.S. Embassy, Rabat, Jan. 8, 2003; and, USTR, "Free Trade Agreement Negotiations, found at <http://www.ustr.gov/new/fta/index.htm>, retrieved July 29, 2003.

Table 4-2
U.S. trade with NAFTA partners, 2001-03
(Billion dollars)

Year	NAFTA partner	Exports	Imports	Trade balance	Two-way trade
2001	Canada	144.6	216.8	-72.2	361.5
	Mexico	90.5	130.5	-40.0	221.0
	Canada and Mexico ..	235.2	347.3	-112.2	582.5
2002	Canada	142.5	210.5	-68.0	353.1
	Mexico	86.1	134.1	-48.0	220.2
	Canada and Mexico ..	228.6	344.6	-116.0	573.3
2003	Canada	148.8	224.1	-75.3	372.9
	Mexico	83.1	137.2	-54.1	220.3
	Canada and Mexico ..	231.9	361.3	-129.4	593.1

Note.—Because of rounding, figures may not add to totals shown.

Source: Compiled from official statistics of the U.S. Department of Commerce.

The following sections discuss the major activities of the NAFTA Free Trade Commission, the Commission for Labor Cooperation, the Commission for Environmental Cooperation, and dispute settlement activities under NAFTA chapters 19 and 20 during 2003.

Free Trade Commission

The NAFTA is overseen by the Free Trade Commission, which comprises the trade ministers of each member country⁵ and meets on an annual basis to discuss past successes and future goals. Mandates are carried out by various committees and workgroups made up of relevant government officials from the three countries. The Free Trade Commission held its annual meeting in Montréal, Québec, Canada, on May 7, 2003, and issued a Joint Statement⁶ which looked favorably at the achievements of the last 10 years, and pledged a continued commitment to multilateral trade and investment liberalization. The Joint Statement also:

- Evaluated the NAFTA's impact on its member countries, concluding that "it is an outstanding demonstration of the rewards that flow to outward-looking, confident countries that implement policies of trade liberalization as a way to increase wealth, improve competitiveness and expand benefits to consumers, workers, and businesses;"⁷

⁵ U.S. Trade Representative represents the United States, the Secretary of Economy represents Mexico, and Minister for International Trade represents Canada.

⁶ USTR, "NAFTA Free Trade Commission Joint Statement Celebrating NAFTA at Ten," Montréal, Québec, Canada, May 7, 2003," press release.

⁷ Ibid.

- Stressed the significant increase in trade and investment that has occurred since the NAFTA's implementation, citing that three-way trade among member countries has reached over US\$621 billion, more than double the pre-NAFTA level, and that Foreign Direct Investment (FDI) into the NAFTA countries also doubled, reaching a figure of US\$299.2 billion in the year 2000; and Reaffirmed a commitment to ensuring that economic integration is accompanied by better environmental performance and improved working conditions as set forth under the North American Agreement on Environmental Co-operation and the North American Agreement on Labor Co-operation.⁸

At the May 2003 meeting, the Free Trade Commission reviewed "outcomes" from a set of mandates that had been issued at the April 2003 Commission meeting in Puerto Vallarta, Mexico:

- The Investment Experts Group (IEG), which had been tasked with examining the investment chapter of the NAFTA, presented its recommendations for review in Montréal. The recommendations were agreed upon and shall have the effect of establishing formal procedures regarding submissions from non-disputing parties, and the implementation of a standard form for Notices of Intent to Submit a Claim to Arbitration. This is expected to enhance the transparency and efficiency of the investor chapter's investor-state dispute settlement process. The members attributed this progress to the efforts of the Council of the Commission for Environmental Cooperation (CEC), and the Joint Public Advisory Committee (JPAC), which both had important hands in the consultations;
- The recommendation of the NAFTA Temporary Entry Working Group has been accepted, and temporary entry for actuaries and plant pathologists will be granted. This change will be implemented trilaterally on February 1, 2004, and will be included in Appendix 1603.D.1 (Professionals) of the NAFTA;
- Signed by representatives of the professional accounting organizations of Canada, Mexico, and the United States, the Mutual Recognition Agreement has been accepted by the Free Trade Commission. This agreement will facilitate the recognition of credentials within the three NAFTA countries and is a positive step in the development in the cross-border trade in services;
- The Commission welcomed the establishment of the North American Steel Trade Committee, which met for the first time on November 21, 2003, in Mexico City. The Committee hopes to promote cooperation among the three NAFTA governments on international steel policy matters, and is intended to serve as a center for information exchange and dialogue;

⁸ January 1, 2004, will mark 10 years since the North American Agreement on Environmental Co-operation and the North American Agreement on Labor Co-operation entered into force.

- The Commission has accepted the recommendation of the NAFTA Advisory Committee on Private Commercial Disputes, which calls for the adoption of the "UNCITRAL Model Law on International Commercial Conciliation." It is hoped that by establishing a harmonized legal framework within the NAFTA region, private commercial disputes will be resolved more effectively.⁹

On October 7, 2003, the Free Trade Commission agreed to pursue further liberalization of the NAFTA rules of origin according to the requirements as outlined in section 202 of the North American Free Trade Implementation Act, and also agreed to commence a study of the Most Favored Nation (MFN) tariffs of each of the Parties.¹⁰ The NAFTA rules of origin provide for preferential tariff and trade treatment of goods of U.S., Canadian, and Mexican origin, pending successful completion of the general NAFTA rules of origin. NAFTA entered into force, the Parties have modified many of the rules of origin, conforming them to tariff classification changes, thus making them less restrictive and less burdensome to the administrator. In reference to the tariff harmonization study, that since 1994, the Parties have undertaken four separate tariff acceleration exercises, speeding the elimination of tariffs on several hundred line items that have covered billions of dollars in trade. Under NAFTA article 308, the three countries harmonize at zero tariff rate duties for computers/computer parts, local area network equipment and semiconductors. Further consultations will be held with a variety of domestic industries in the hopes that more products can be covered by this exercise. The Free Trade Commission has agreed that the United States will host the 2004 Ministerial meetings.

Commission for Labor Cooperation

The Commission for Labor Cooperation (CLC) was formed under the North America Agreement on Labor Cooperation (NAALC). The NAALC is a side-agreement to NAFTA, implemented to ensure January 1, 1994, and intended that NAFTA-related economic integration improves working conditions and living standards and increases adherence to basic labor law principles by each country. The NAALC is administered by the Commission for Labor Cooperation (CLC), which is overseen by a Council comprising the three NAFTA member labor ministers. Each member has a National Administrative Office (NAO) to ensure the implementation of the NAALC and to investigate any violation of the agreement. In the United States, a 12-member National Advisory Commission drawn from academia, business, and labor groups advises the NAO. If the NAO determines that a violation of the agreement has occurred, the matter is then referred to the CLC Council to hold ministerial consultations with the respective party to resolve the issue.

⁹ Previous information summarized: from USTR, "NAFTA Free Trade Commission Joint Statement Celebrating NAFTA at Ten," Montréal, Québec, Canada, May 7, 2003," press release.

¹⁰ USTR, "Harmonization of Most Favored Nation Tariff Rates for the United States, Canada, and Mexico; Liberalization of the Rules of Origin Applicable Under Provisions of the North American Free Trade Agreement," found at <http://search.epnet.com/direct.asp?an=CX2003346U6030&db=bwh>, retrieved Jan. 8, 2004.

The North American Labor ministers held their Seventh Ministerial Meeting in Washington, D.C., on November 13, 2003, to review the substantially increased cooperation that has taken place in the area of worker's rights since the NAFTA's inception 10 years ago.¹¹ The major conclusions¹² of the review were to:

- Continue the discussion about timely labor issues facing the three countries. Such issues include developing the skills needed for the 21st-century workforce, introducing the social and labor components of hemispheric integration, and improving migrant worker rights;
- Solicit public views on the progress and efficiency of the NAALC;
- Announce the release of the second edition of a major report on North American labor markets entitled *North American Labor Markets: Main Changes Since NAFTA*, which provides data on labor market issues such as unemployment, productivity, hours of work, and classes of unemployment; and
- Announce the release in 2004 of the *North American Migrant Workers' Guide* produced by the Secretariat; the guide is intended to ensure that migrant workers in North America know their labor rights and understand how they are enforced in each country (the Council also approved a plan for the promotion and distribution of the guide in each country).

In 2003, the CLC undertook ministerial consultations on three public submissions that raised issues concerning freedom of association and the right to bargain collectively in Mexico.¹³ Under the NAALC, domestic interest groups can submit requests to their national NAO offices to investigate alleged violations of the NAALC or the labor laws of another country. The consultations were held in Monterrey, Mexico, on March 20, 2003, at the Labor Boards in North America Trilateral Seminar. Consistent with the ministerial agreements, the 2003 seminar provided the opportunity for U.S. experts representing the National Mediation Board, the National Labor Relations Board, and the Federal Mediation and Conciliation Board, along with their counterparts from Mexico and Canada, to discuss: labor law and practice governing labor members and officials; their structure and responsibilities; the rules and procedures to assure their impartiality; their role in the process of gaining the right to a collective bargaining contract; and the types of unions and their relevant rights.¹⁴ The summit concluded with panelists and audience members exchanging views over labor board practices in each Member Country.

¹¹ Commission of Labor Cooperation (CLC), "North American Labor Ministers Meet to Discuss Program of the NAFTA Labor Commission," found at <http://www.naalc.org/english/announce8.shtml>, retrieved Jan. 8, 2004.

¹² Ibid.

¹³ The three public submissions in question were numbers 9702 (Han Young), 9703 (ITAPSA), and 9901 (TAESA), and can be found at http://www.naalc.org/english/summary_usa.shtml.

¹⁴ U.S. Department of Labor, NAO Cooperative Activities, "2003 Cooperative Activities Work Programs," found at <http://www.dol.gov/ilab/programs/coopact/prevcoopact.htm>, retrieved Jan. 8, 2004.

One new submission was filed in 2003. U.S. NAO Submission 2003-1 (Puebla) was filed on September 30, 2003, by the United Students Against Sweatshops (USAS) and the Centro de Apoyo al Trabajador concerning conditions at a garment factory in the State of Puebla, Mexico.¹⁵ An amendment filed on November 10, 2003, raises similar enforcement issues concerning another garment factory also located in the State of Puebla. The submission and the amendment allege violations under the NAALC concerning freedom of association and the right to organize; collective bargaining, occupational safety and health; minimum employment standards (minimum wage and overtime pay); and access to fair and transparent labor tribunal proceedings. In particular, the petitioners allege that workers were illegally denied the right to form an independent union, laws against phantom unions were not enforced. The National Administrative Office will examine the submission to decide whether to accept it for review.¹⁶

Also in 2003, the Council agreed that the three NAFTA countries and the Secretariat would develop a plan to make a North American contribution to the implementation of the Action Plan of the 13th Inter-American Conference of Ministers of Labor. This forum, designed to address the labor dimensions of globalization in the Americas and to strengthen the capacity of North American labor ministries, took place on September 24, 2003 in Salvador da Bahia, Brazil.¹⁷

In 2004, the Council for the Commission for Labor Cooperation will be undertaking its second, mandatory four-year review of the North American Agreement on Labor Cooperation (NAALC), covering the period from 1999 to the present.¹⁸

Commission for Environmental Cooperation

At the same time, the NAFTA partners wanted to ensure that environmental safeguards were built alongside the trade liberalization pact. They therefore signed an accord, the North American Agreement for Environmental Cooperation (NAAEC), to address potential trade-related environmental concerns.¹⁹ The Commission for Environmental Cooperation (CEC) was created to oversee implementation of the NAAEC. Its governing Council consists of the Canadian Environment Minister, the Mexican Secretary for Environment and Natural Resources, and the U.S.

¹⁵ U.S. Department of Labor, Status of Submissions Under the North American Agreement on Labor Cooperation (NAALC), found at <http://www.dol.gov/ILAB/programs/nao/status.htm#iia1>, retrieved Jan. 22, 2004.

¹⁶ Ibid.

¹⁷ Organization of American States, "Hemisphere's Labor Ministers Meet in Brazil," found at http://www.oas.org/OASpage/press_releases/press_release.asp?sCodigo=E-178/0, retrieved Jan. 12, 2004.

¹⁸ National Administrative Office, U.S. Dept. of Labor, found at <http://www.dol.gov/ILAB/programs/nao/main.htm>, retrieved Jan. 12, 2004.

¹⁹ 2004-2007 Operational Plan of the Commission for Environmental Cooperation at Internet site http://www.cec.org/files/pdf/PUBLICATIONS/2004-2007-Operational-Plan_en.pdf, retrieved Jan. 12, 2004.

Environmental Protection Agency Administrator. Also integral to the mission of the CEC are the Joint Public Advisory Committee (JPAC) and Secretariat. The JPAC consists of five private citizens from each of the NAFTA countries, while the Secretariat is made up of professional staff.²⁰

Articles 14 and 15 of the NAAEC are intended to provide citizens and nongovernmental organizations with a mechanism to aid in the enforcement of environmental laws in the NAFTA countries. Article 14 governs alleged violations submitted for review by the CEC. It sets forth specific guidelines regarding the format and content of valid submissions and appropriate complaining parties and Article 15 outlines the Secretariat's obligations in considering the submissions developing a factual record.²¹ In 2003 the Secretariat published pursuant to the provision of Article 15 the factual records of six pursuant to the provisions of Article 14 files and closed those files.²² Ten files remain active, five of which were first submitted in 2003. A summary of Chapter 14 activity during 2003 is contained within table 4-3. Omitted from the summary is a single file, Home Port Xcaret (03-002), which was terminated on May 14, 2003, after the 30-day term expired without the Secretariat receiving a submission from the complaining party that conformed to article 14(1).²³ A complete list of factual records published under Article 15 during 2003 may be found in table 4-4.

On October 31, 2003, the CEC published a revised draft of its operational plan for 2004-06. The plan lays out four main program goals to be pursued in the years ahead.

1. "To foster understanding of the state of our environment, and its relation to the economy and trade in North America."
2. "To act as a catalyst to improve domestic law and policy, and enhance environmental enforcement and compliance across North America."
3. "To mobilize international cooperation to resolve critical North American environmental issues."
4. "To provide a forum for public dialogue and participation concerning environmental issues in North America."²⁴

The plan elaborates in great detail the short-term objectives, targets, and strategies that will result in fulfillment of the program goals. Also included in the 2004-06

²⁰ USTR Draft Report Section III "Regional Negotiations" Elements of NAFTA Subsection 5: "NAFTA and the Environment."

²¹ NAAEC Articles 14 and 15, found at Internet site http://www.cec.org/pubs_info_resources/law_treat_agree/naaec/naaec05.cfm?varlan=english#14, retrieved Jan. 14, 2004.

²² CEC "Citizen Submissions on Enforcement Matters: Current Status of Filed Submissions," found at Internet site <http://www.cec.org/citizen/status/index.cfm?varlan=english>, retrieved Jan. 14, 2004.

²³ CEC "Citizen Submissions on Enforcement Matters: Home Port Xcaret," found at Internet site <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=89>, retrieved Jan. 14, 2004.

²⁴ Ibid.

Table 4-3
Active Chapter 14 files through 2003

Name	Case	First Filed	Country	Status
Alca-Iztapalpa II	SEM-03-004	6/17/03	Mexico	Considering recommendation of a factual record
Cytrar III	SEM-03-006	8/15/03	Mexico	Considering recommendation of a factual record
El Boludo Project	SEM-02-004	8/23/02	Mexico	Considering recommendation of a factual record
Lake Chapala II	SEM-03-003	5/23/03	Mexico	Awaiting response from concerned government party
Molymex II	SEM-00-005	4/6/00	Mexico	The Secretariat placed a work plan and a repository of documents on its web site or otherwise made these available to the public and stakeholders
Montreal Technoparc	SEM-03-005	8/14/03	Canada	Considering recommendation of a factual record
Ontario Logging	SEM-02-001	2/6/02	Canada	The Secretariat has recommended the preparation of a factual record
Ontario Power Generation	SEM-03-001	5/1/03	Canada	Considering recommendation of a factual record
Pulp and Paper	SEM-02-003	5/8/02	Canada	The Council voted to instruct the Secretariat to develop a factual record
Tarahumara	SEM-00-006	6/9/00	Canada	The Secretariat placed a work plan and a repository of documents on its web site or otherwise made these available to the public and stakeholders

Source: North American Commission for Environmental Cooperation.

Table 4-4
Factual records published in 2003 under chapter 15

Name	Case	First Filed	Country	Date Published
Aquanova	SEM-98-006	10/20/98	Mexico	6/23/03
BC Logging	SEM-00-004	3/15/00	Canada	8/11/03
BC Mining	SEM-98-004	6/29/98	Canada	8/12/03
Migratory Birds	SEM-99-002	11/19/99	United States	4/24/03
Oldman River II	SEM-97-006	10/4/97	Canada	8/11/03
Rio Magdalena	SEM-97-002	3/15/97	Mexico	12/11/03

Source: North American Commission for Environmental Cooperation.

operational plan is a discussion of steps necessary to enhance the effectiveness of CEC management.²⁵

The CEC Council held its Tenth Regular Session on June 24-25, 2003. Significant developments at the meeting include Resolution 03-07 (annex D). The resolution adopts a strategic plan for North American cooperation in the conservation of biodiversity.²⁶ Council members directed the Secretariat to “coordinate, seek partners, additional funds, and diverse input”

²⁵ CEC document “Operation Plan for the Commission of Environmental Cooperation 2004-2006” found at Internet site http://www.cec.org/files/PDF/PUBLICATIONS/2004-2007-Operational-Plan_en.pdf, retrieved Jan. 15, 2004.

²⁶ Tenth Regular Session of the Council (CEC) Document C/03-00/SR/01/final.

in their implementation of the plan.²⁷ The Council noted efforts in the area of children's health as well, directing the Secretariat to publish the first CEC report on the subject during 2004. Also to be published in 2004 is a report from the Expert Advisory Board on Children's Health and the Environment outlining progress in the implementation of the Cooperative Agenda on Children's Health and the Environment.²⁸ JPAC took the opportunity to express concern over the timeliness of CEC actions, citing the late release of a draft report and lack of progress on the proposed Environment and Trade ministerial as problematic. The JPAC chairman voiced his desire to engage in an open dialogue with council members about issues that require their attention.²⁹ The CEC also kicked off a 10-year review of NAFTA and the NAAEC at the meeting. The review is aimed at assessing the effectiveness of the CEC and NAAEC.³⁰

Dispute Settlement

Chapter 19 provides for binational review of antidumping (AD) and countervailing duty (CVD) final determinations:

Article 1904 establishes a mechanism to provide an alternative to judicial review by domestic courts of final determinations in antidumping and countervailing duty cases, with review by independent binational panels. A Panel is established when a Request for Panel Review is filed with the NAFTA Secretariat by an industry asking for a review of an investigating authority's decision involving imports from a NAFTA country....

When a dispute arises under Chapter 19, a panel of five members is selected from the national Roster lists. Each government in the dispute (through its trade minister) appoints two panelists, in consultation with the other involved government. (Chapter 19 panels are always binational in composition). The fifth panelist is from one of the two countries and generally alternates with each dispute....

Chapter 19 panels review final antidumping (AD) and countervailing duty (CVD) determinations solely to determine, based on the administrative record, whether the relevant administrative agency applied its national AD/CVD laws correctly. The panels will employ the same standard of review and the same general legal principles, as would a domestic court in the country where the determination was made.

Seven binational panels were formed in 2003 under the provisions of NAFTA chapter 19, which provides for binational panel review in lieu of court review in antidumping and countervailing duty matters. Every panel formed in 2003 involved challenges to U.S. agencies' determinations – i.e., determinations of the USITC and the Department of Commerce (Commerce). All of the six Chapter 19 reviews begun in 2003 were active on January 1, 2004. None of the NAFTA Chapter 7 binational panels issued decisions in 2003. (See table 4-5).

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

U.S.-Morocco Free Trade Agreement³¹

In April 2002, the United States and Morocco agreed to pursue a free trade agreement. On October 1, 2002, USTR notified Congress and trade negotiations were initiated with Morocco in January 2003 and an agreement was signed in March 2004. The U.S. Administration states that a U.S.-Morocco FTA is an integral part of its strategy to create a Middle East Free Trade Area by 2013.³² According to USTR, the agreement negotiated will build on bilateral work begun in 1995 under the U.S.-Morocco Trade and Investment Framework Agreement; support significant economic and political reforms already under way in Morocco; eliminate duties and certain other barriers to trade in goods and services between the U.S. and Morocco; enhance protection of intellectual property rights; and address government procurement, and trade related environmental and labor matters.³³ Currently, U.S. products entering Morocco face an average tariff of over 20 percent while Moroccan products are subject to an average tariff of 4 percent as they enter the United States.

According to USTR, key goals of the FTA are as follows:³⁴

1. Trade in goods: seek to eliminate tariffs and other duties and charges on trade between Morocco and the United States on the broadest possible basis, subject to reasonable adjustment periods for import-sensitive products. Seek to have Morocco join the WTO Information Technology Agreement. Pursue favorable staging of tariff elimination and other market access commitments that improve the competitive position of U.S. goods vis-à-vis the EU. Seek to eliminate Morocco's nontariff barriers to U.S. exports, including licensing barriers, restrictive administration of tariff-rate quotas, unjustified trade restrictions that affect new U.S. technologies, and other trade restrictive measures that U.S. exporters identify. Seek to have the Moroccan Government reform its policies in the agricultural sector, particularly with respect to the grains market. Seek to eliminate Moroccan Government practices that adversely affect U.S. exports of perishable or cyclical agricultural products, while improving U.S. import relief mechanisms. Pursue

³¹ On March 2, 2004, the United States and Morocco signed an FTA that covered more than 95 percent of bilateral trade in consumer and industrial products that will become duty-free immediately upon entry into force of the agreement with the remaining tariffs to be eliminated within nine years.

³² USTR, U.S. and Morocco Conclude Free Trade Agreement, press release, Mar. 2, 2004, found at <http://www.ustr.gov>, retrieved Mar. 23, 2004.

³³ Ibid.

³⁴ Overview of the Dispute Settlement Provisions of the North American Free Trade Agreement (NAFTA) found at http://www.nafta-sec-alena.org/DefaultSite/dispute/index_e.aspx?CategoryID=16 downloaded 6/18/2004.

Table 4-5
NAFTA Chapter 19 binational panels, active reviews in 2003

NAFTA country	Case	National agencies' final determination ¹	Product description
United States	USA-97-1094-10	5 th antidumping duty administrative review	Gray portland cement and clinker from Mexico
	USA-MEX-98-1904-02	6 th antidumping duty administrative review	Gray portland cement and clinker from Mexico
	USA-MEX-98-1904-05	Final scope ruling	Circular welded non-alloy steel pipe from Mexico
	USA-MEX-2000-1904-06	Full sunset review of antidumping duty order	Gray portland cement and clinker from Mexico
	USA-CDA-2000-1904-06	Full sunset review of antidumping duty order	Pure magnesium from Canada
	USA-CDA-2000-1904-09	5 year reviews of countervailing duty and antidumping duty orders	Magnesium from Canada
	USA-CDA-2000-1904-11	5 year review of final injury determination and antidumping duty orders	Carbon steel products from Canada
	USA-MEX-2001-1904-03	Final results of the full sunset review of the antidumping duty order	Oil country tubular goods from Mexico
	USA-MEX-2001-1904-04	Final result of the 9 th antidumping duty administrative review	Gray portland cement and clinker from Mexico
	USA-MEX-2001-1904-05	Final results of the 4 th antidumping duty administrative review and determination not to revoke	Oil country tubular goods from Mexico
	USA-MEX-2001-1904-06	Final results of the five year review of the antidumping duty order	Oil country tubular goods from Mexico
	USA-MEX-2002-1904-01	Dismissal of request to institute a sec. 751 (b) investigation	Gray portland cement and clinker from Mexico
	USA-CDA-2002-1904-02	Final determination of sales at less than fair value	Softwood lumber products from Canada
	USA-CDA-2002-1904-03	Final affirmative countervailing duty order and final negative critical circumstances determination	Softwood lumber products from Canada
	USA-MEX-2002-1904-05	10 th antidumping duty administrative review	Gray portland cement and clinker from Mexico
	USA-MEX-2002-1904-07	Final injury determination	Certain softwood lumber products from Canada
	USA-CDC-2002-1904-09	Final injury determination	Carbon and certain alloy steel wire rod from Canada
	USA-CDA-2003-1904-02	Department of Commerce final results of countervailing duty new shipper review	Alloy magnesium from Canada
	USA-CDA-2003-1904-05	Department of Commerce final determination of sales at less than fair value	Certain durum wheat and hard red spring wheat from Canada
	USA-CDA-2003-1904-05	Department of Commerce final affirmative countervailing duty determinations	Certain durum wheat and hard red spring wheat from Canada
	USA-CDA-2003-1904-06	USITC final injury determination	Hard red spring wheat from Canada
	USA-MEX-2003-1904-01	Department of Commerce final results final review of the 11 th antidumping duty administrative review	Gray portland cement and clinker from Mexico

See footnote at end of table.

Table 4-5—*Continued*
NAFTA Chapter 19 binational panels, active reviews in 2003

NAFTA country	Case	National agencies' final determination ¹	Product description
United States- <i>Continued</i>	USA-MEX-2003-1904-03	Department of Commerce final results final review of the 12 th antidumping duty administrative review	Gray portland cement and clinker from Mexico

¹ In the United States, dumping and subsidy determinations are made by the U.S. Department of Commerce, and injury determinations are made by the U.S. International Trade Commission. In Canada, final dumping and subsidy determinations are made by Revenue Canada (Customs and Excise) and injury determinations are made by the Canadian International Trade Tribunal. In Mexico, all determinations are made by the Secretaria de Economia (formerly the Secretaria de Comercio y Fomento Industrial).

Source: NAFTA Secretariat, found at <http://www.nafta-sec-alena.org/english/index.htm>, retrieved Apr. 2, 2004.

a mechanism with Morocco that will support achieving the U.S. objective in the WTO negotiations of eliminating all export subsidies on agricultural products, while maintaining the right to provide bona fide food aid and preserving U.S. agricultural market development and export credit programs. Pursue fully reciprocal access to the Moroccan market for U.S. textile and apparel products.

2. Customs matters, rules of origin, and enforcement cooperation: seek rules to require that Morocco's customs operations are conducted with transparency, efficiency, and predictability and that customs laws, regulations, decisions, and rulings are not applied in a manner that would create unwarranted procedural obstacles to international trade. Seek rules of origin, procedures for applying these rules, and provisions to address circumvention matters that will ensure that preferential duty rates under the FTA with Morocco apply only to goods eligible to receive such treatment, without creating unnecessary obstacles to trade. Seek terms for cooperative efforts with the Moroccan Government regarding enforcement of customs and related issues, including trade in textiles and apparel.
3. Sanitary and Phytosanitary (SPS) measures: Seek to have Morocco reaffirm its WTO commitments on SPS measures and eliminate any unjustified SPS restrictions. Seek to strengthen collaboration with Morocco in implementing the WTO SPS Agreement and to enhance cooperation with Morocco in relevant international bodies on developing international SPS standards, guidelines, and recommendations.
4. Technical Barriers to Trade (TBT): Seek to have Morocco reaffirm its WTO TBT commitments and eliminate any unjustified TBT measures. Seek to strengthen collaboration with Morocco on implementation of the WTO TBT Agreement and create a procedure for exchanging information with Morocco.
5. Intellectual property rights: Seek to establish standards to be applied in Morocco that build on the foundations established in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and other international intellectual property agreements.
6. Trade in services: Pursue disciplines to address discriminatory and other barriers to trade in Morocco's services market.
7. Electronic commerce: Seek to affirm that Morocco will allow goods and services to be delivered electronically and seek to ensure that it does not apply customs duties to digital products or unjustifiably discriminate among products delivered electronically.
8. Government procurement: Seek to establish procurement procedures and practices in Morocco for government procurement that are fair, transparent, and predictable.
9. Transparency/anticorruption/regulatory reform: Seek to make the administration of Morocco's trade practices more transparent and seek to

ensure that it applies high standards prohibiting corrupt practices affecting international trade.

10. Trade remedies: Provide a bilateral safeguard mechanism during the transition period. Make no changes in U.S. antidumping and countervailing duty laws.
11. Environment: Seek to promote trade and environment practices that are mutually supportive.
12. Labor, including child labor: Seek an appropriate commitment by Morocco to be effective in enforcement of its labor laws.
13. State-to-state dispute settlement: Seek to establish fair, transparent, timely, and effective procedures to settle disputes arising under the agreement.

Free Trade Area of the Americas

Negotiations for the creation of the Free Trade Area of the Americas (FTAA) continued during 2003.³⁵ The United States and the 33 other Western Hemisphere countries launched the FTAA talks in April 1998, and began market access negotiations in May 2002. Their stated goal is to conclude negotiations by no later than January 2005 so that the FTAA agreement can enter into force by no later than December 2005.³⁶ In 2003, combined U.S. exports to the other 33 FTAA countries totaled \$277.7 billion, and U.S. imports were valued at \$437.8 billion. NAFTA alone accounted for more than 80 percent of that trade.

Before the negotiations began, participants selected countries to chair or co-chair the overall FTAA negotiations. The year 2003 marked the beginning of the final phase of the negotiations, and the first full year with the United States and Brazil as co-chairs. This co-chairmanship is scheduled to lead the FTAA negotiations until they conclude.³⁷

Trade ministers of the respective FTAA countries are responsible for the ultimate oversight and management of the negotiations. The trade ministers established the trade negotiations committee (TNC) at the vice-ministerial level to provide direct guidance and administrative responsibilities for the FTAA negotiations.³⁸ The trade

³⁵ USTR, "U.S. and Morocco Conclude Free Trade Agreement," press release, Mar. 2, 2004, found at <http://www.ustr.gov/releases/2004/03/04-15.pdf>, retrieved Mar. 23, 2004. Notification letter to Congress, USTR, found at http://www.ustr.gov/fta/morocco/house_notification.pdf, retrieved Mar. 24, 2004.

³⁶ For a description of FTAA developments through 2003, see USITC, *The Year in Trade, 2002*, USITC publication 3630, pp. 4-14 to 4-15, and prior reports in this series.

³⁷ At the Third Summit of the Americas in April 2001, and since that time, Venezuela has indicated that it reserves its position with respect to the timing for concluding the negotiations and the date of entry into force of the FTAA. "Third Summit of the Americas: Declaration of Quebec City, April 20-22, 2001," FTAA Official Website, found at http://www.ftaa-alca.org/Summits/Quebec/declara_e.asp, retrieved Mar. 24, 2004.

³⁸ For a description of FTAA developments through 2003, see USITC, *The Year in Trade, 2002*, USITC publication 3630, pp. 4-14 to 4-15, and prior reports in this series.

ministers met at their Eighth Trade Ministerial in Miami in November 2003 to provide guidance for the final phase of the FTAA negotiations. The TNC was instructed to develop the framework for the FTAA negotiations, specifically

[T]o develop a common and balanced set of rights and obligations applicable to all countries. The negotiations on the common set of rights and obligations will include provisions in each of the following negotiating areas: market access; agriculture; services; investment; government procurement; intellectual property; competition policy; subsidies, antidumping, and countervailing duties; and dispute settlement. On a plurilateral basis, interested parties may choose to develop additional liberalization and disciplines. The TNC shall establish procedures for these negotiations . . . The results of the negotiations must be WTO compliant.³⁹

The ministers directed that market access negotiations be completed by September 30, 2004, and reaffirmed their commitment to “the successful conclusion of the FTAA negotiations by January 2005.”⁴⁰ A third draft of the FTAA agreement text was released November 21, 2003. Significant portions of that text were in brackets—i.e., not agreed upon.⁴¹

The TNC met in April, July, September, and November 2003, and in February, March, and April 2004. In their March 2004 communiqué, after the November 2003 Miami Ministerial, the TNC co-chairs reported that additional time was needed for delegates to decide on a framework for the FTAA negotiations.⁴² In their April 2004 communiqué, the TNC co-chairs again reported that delegates had not yet been able to develop a framework for the FTAA negotiations, and that “further progress is necessary” at this stage before resuming the work of the TNC.⁴³

During 2003, the United States continued its active participation in the meetings of the nine FTAA negotiation groups (market access, agriculture, intellectual property rights, services, investment, government procurement, competition policy, dispute settlement, and subsidies/antidumping/countervailing duties) and the three committees and non-negotiating groups (the Technical Committee on Institutional Issues, the Consultative Group on Smaller Economies, and the Committee of Government Representatives on the Participation of Civil Society). The United States also

³⁹ “Ministerial Declaration of San José: Summit of the Americas Fourth Trade Ministerial Joint Declaration San José, Costa Rica, Mar. 19, 1998,” FTAA Official Website, found at http://www.ftaa-alca.org/Ministerials/SanJose/SanJose_e.asp, retrieved Mar. 24, 2004.

⁴⁰ “Ministerial Declaration: Free Trade Area of the Americas Eighth Ministerial Meeting, Miami, Nov. 20, 2003,” FTAA official website, found at http://www.ftaa-alca.org/Ministerials/Miami/Miami_e.asp, retrieved Mar. 24, 2004.

⁴¹ Ibid.

⁴² The text of the draft agreement was posted on the FTAA official website, found at http://www.ftaa-alca.org/FTAADraft03/Index_e.asp, retrieved Mar. 24, 2004.

⁴³ “FTAA Trade Negotiations Committee Joint Communiqué of Co-chairs,” FTAA.TNC/com/02, Mar. 10, 2004, FTAA Official Website, found at http://www.ftaa-alca.org/TNC/TNCcom02_e.asp, retrieved Mar. 24, 2004.

participated in the ad hoc group on Rules of Origin and an ad hoc group within the Market Access Negotiating Group, which are negotiating rules of origin for the FTAA.⁴⁴

The heads of state and government of the Americas met in a Special Summit of the Americas in Monterrey, Mexico, in 2004.⁴⁵ This special summit addressed measures to combat poverty, promote growth and development, and strengthen democracy in the hemisphere. The leaders also supported the agreement of trade ministers on the framework and calendar adopted for concluding the negotiations for the FTAA.

U.S. Free Trade Agreement with Central America and the Dominican Republic

President Bush announced his intention to explore a free trade agreement with Central America (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) on January 16, 2002. The Dominican Republic was integrated into the Central American negotiations with an agreement that was concluded on March 15, 2004. The President formally notified Congress of his intention to begin free trade negotiations on October 1, 2002, following passage of Trade Promotion Authority.⁴⁶

The United States began FTA negotiations on the Central America Free Trade Agreement (CAFTA) on January 8, 2003.⁴⁷ Nine rounds of negotiations were held in 2003. Five negotiating groups covered topics such as market access, investment and services, government procurement and intellectual property, labor and environment, and institutional issues such as dispute settlement. A sixth group on trade capacity building met in parallel with the five negotiating groups.⁴⁸

On December 17, 2003, the United States concluded negotiations on the CAFTA.⁴⁹ Under the agreement, over 80 percent of U.S. exports of consumer and industrial products will be duty-free upon entry into force of the agreement and 85 percent will

⁴⁴ Ibid, Apr. 1, 2004, FTAA Official Website, found at http://www.ftaa-alca.org/TNC/TNCcom03_e.asp, retrieved Apr. 5, 2004.

⁴⁵ For a more detailed description of the U.S. position in the FTAA negotiations, see USTR, 2004 Trade Policy Agenda and 2003 Annual Report, pp. 110-12, found at [http://www.ustr.gov/reports/2004 Annual/III-bilateral.pdf](http://www.ustr.gov/reports/2004%20Annual/III-bilateral.pdf), retrieved Mar. 29, 2004.

⁴⁶ Prior summits were in Miami in 1994; in Santiago, Chile, in 1998; and in Quebec, Canada, in 2001. FTAA Official Website, found at http://www.ftaa-alca.org/Summits_e.asp, retrieved Mar. 24, 2004.

⁴⁷ USTR, "United States and Central American Nations Launch Free Trade Negotiations," Jan. 8, 2003, found at <http://www.ustr.gov>, retrieved Apr. 30, 2004.

⁴⁸ The United States initially concluded negotiations with Honduras, Nicaragua, El Salvador, and Guatemala. Negotiations were concluded with Costa Rica on Jan. 25, 2004. USTR, "U.S. and Dominican Republic Conclude Trade Talks Integrating the Dominican Republic into the Central America Free Trade Agreement," press release 04-19, Mar. 15, 2004, and "U.S. and Costa Rica Reach Agreement on Free Trade," press release 04-03, Jan. 25, 2004, found at <http://www.ustr.gov>, retrieved Apr. 30, 2004.

be duty-free within five years. All remaining tariffs will be phased out within 10 years. More than half of U.S. agricultural exports will be duty-free immediately and remaining tariffs will be phased out within 15 years. Textiles and apparel will be duty-free, if they meet the agreement's rules of origin. Market access commitments were secured across all service sectors. Other areas covered were protection for investment, digital products, workers rights, environmental cooperation, and government procurement.⁵⁰ The text of the agreement was released on January 25, 2004.

U.S.-Australia Free Trade Agreement⁵¹

In November 2002, the USTR notified the U.S. Congress of the administration's intent to enter into a free trade agreement negotiations with Australia. The United States and Australia held five rounds of FTA negotiations in 2003, and an agreement was concluded in February 2004. According to USTR, more than 99 percent of U.S. exports of manufactured goods to Australia will become duty-free immediately upon entry into force of the agreement; and it is estimated that the elimination of tariffs could result in \$2 billion per year in increased U.S. exports of manufactured goods. Australian tariffs are much higher than U.S. tariffs; as such, American firms today pay 10 times many in total annual import tariffs to Australia than the U.S. collects imports from Australia. The agreement is the first free trade agreement that the United States has entered into with a developed country since 1998.⁵²

According to USTR, key goals of the FTA are as follows:⁵³

- Trade in industrial goods and agriculture: Eliminates tariffs, other duties, and charges on U.S.-Australia trade. Seek elimination of Australian Government export monopoly arrangements for wheat, barley, sugar, and rice by requiring Australia to eliminate exclusive export rights for its state-trading enterprises (STEs), end any financing privileges for these enterprises, and provide more information on the activities and any special rights accorded to STEs. Coordinate with Australia within the WTO to eliminate all export subsidies on agricultural products. Pursue fully reciprocal access to Australia's market for U.S. textile and apparel products.

⁴⁹ USTR, "United States and Central American Nations Launch Free Trade Negotiations," Jan. 8, 2003 found at <http://www.ustr.gov>, retrieved Apr. 30, 2004.

⁵⁰ The agreement has not yet been presented to Congress for implementation.

⁵¹ USTR, "U.S. and Central American Countries Conclude Historic Free Trade Agreement," Dec. 17, 2003.

⁵² The United States and Australia concluded a free trade agreement on Feb. 8, 2004.

⁵³ USITC, "U.S.-Australia Free Trade Agreement; Potential Economywide and Selected Effects," USITC publication 3697, May 2004.

- Customs matters, rules of origin, and enforcement cooperation: Requires that Australia's customs operations are conducted with transparency, efficiency, and predictability; and that customs laws, regulations, decisions, and rulings do not create unwarranted procedural obstacles to international trade.
- Sanitary and phytosanitary (SPS) measures: Requires Australia to reaffirm its WTO commitments on SPS measures and eliminate any unjustified SPS restrictions.
- Technical barriers to trade (TBT): Requires Australia to reaffirm its WTO TBT commitments, including those relating to labeling requirements on U.S. food and agricultural products produced through biotechnology, and eliminate any unjustified TBT measures.
- Intellectual property rights: Requires Australia's ratification of the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty. Seek to establish standards that build on the foundations established in the WTO Agreement on TRIPs and other international intellectual property agreements. Seek to enhance the level of Australia's protection for intellectual property rights beyond TRIPs in new areas of technology, such as Internet service provider liability.
- Trade in services: Pursue a comprehensive approach to market access, including enhanced access for U.S. services firms to telecommunications and any other appropriate service sector in the Australian market. Seek improved transparency and predictability of Australia's regulatory procedures. Seek appropriate provisions to ensure that Australia will facilitate the temporary entry of U.S. business persons into its territories.
- Investment: Requires rules that reduce or eliminate artificial or trade-distorting barriers to U.S. investment in Australia, including investment screening by the Australian Government, while ensuring that Australian investors in the United States are not accorded greater substantive rights with respect to investment protections than U.S. investors in Australia. Secure for U.S. investors in Australia important rights comparable to those that would be available under U.S. legal principles and practices.
- Electronic commerce: Affirms that Australia will allow goods and services to be delivered electronically on terms that promote the development and growth of electronic commerce. Seek to ensure that Australia does not apply customs duties in connection with digital products or unjustifiably discriminate among products delivered electronically.

⁵⁴ Notification letter to Congress, USTR, found at <http://www.ustr.gov/releases/2002/11/2002-11-13-australia-byrd.PDF>, retrieved Mar. 23, 2004.

- Government procurement: Establishes rules requiring that Australia's government practices be fair, transparent, and predictable for suppliers of U.S. goods and services who seek to do business with the Australian Government.
- Transparency/anticorruption/regulatory reform: Ensures that the administration of Australia's trade practices are fair and transparent, including ensuring that interested parties can have timely access to information on measures and Australia's procedures for administering them.
- Trade remedies: Provides a bilateral safeguard mechanism during the transition period. Make no changes in U.S. antidumping and countervailing duty laws.
- Environment: Promotes trade and environmental practices that are mutually supportive.
- Labor, including child labor: Commitments by Australia to ensure effective enforcement of its labor laws.
- State-to-state dispute settlement: Establishes fair, transparent, timely, and effective procedures to settle disputes arising under the agreement.